

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT HUNTINGTON

ENTERED

AUG 22 2005

TERESA L. DEPPNER, CLERK
U.S. District & Bankruptcy Courts
Southern District of West Virginia

SHERMAN L. PAYNE,

Plaintiff,

v.

Civil Action No. 3:04-0558

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

MEMORANDUM OPINION AND ORDER

Plaintiff Sherman L. Payne appeals the Social Security Commissioner's (hereinafter "Commissioner") final decision denying his applications for disability insurance benefits and supplemental security income based on disability, brought under 42 U.S.C. §§ 405(g) and 1383(c)(3). For the reasons set forth below, the Commissioner's decision is **AFFIRMED**.

I

On June 4, 2004, the plaintiff filed a complaint alleging that the Commissioner's final decision denying him benefits was not supported by substantial evidence. The government filed its answer on August 6, 2004, denying the allegation.

On September 2, 2004, the plaintiff moved for an extension of time to file his motion for judgment on the pleadings and his brief in support of that motion. Magistrate Judge Maurice G. Taylor, Jr. granted plaintiff's motion to extend the filing date to October 1, 2004. On October 15, 2004, plaintiff moved for a second extension of time to file his motion for judgment on

pleadings and his brief in support of that motion. On October 19, 2004, Magistrate Judge Taylor granted plaintiff's motion to extend the filing date to November 1, 2004.

On March 22, 2005, Magistrate Judge Taylor entered an order noticing the plaintiff that, pursuant to Local Rule of Civil Procedure 8.01, his complaint would be dismissed from the docket of the Court thirty days from the date of entry of the order unless within such thirty-day period a motion for judgment on the pleadings and supporting memorandum were filed by the plaintiff or good cause was shown for non-dismissal. On April 21, 2005, plaintiff filed the following motion for an extension of time:

COMES NOW the Plaintiff, Sherman L. Payne, by counsel, Sylvia G. Casey, and moves this Court for an additional 14 days, or until May 6, 2005 within which to file Plaintiff's Motion for Judgment on the Pleadings and Brief in support thereof.

In support of this motion, counsel states that additional time is needed because of interruption of my internet service provider and other computer problems which bar my access to WestLaw and other research providers and use of the dictaphone which is dependent on computer access. I do not lightly advise the Court that I am unable to complete the final brief preparation by this date but have encountered problems that bar finalization of the brief. The Plaintiff further states that opposing counsel has been contacted and has no objection to this motion.

WHEREFORE, it is respectfully requested that Plaintiff's Motion be granted and that Plaintiff have until and including, May 6, 2005, by which to file a Motion for Judgment on the Pleadings and supporting brief.

(Mot. Enlarge Time, docket entry 12.) On April 26, 2005, Magistrate Judge Taylor granted plaintiff's motion to extend the filing time to May 6, 2005.

To date, the plaintiff has failed to file his motion for judgment on the pleadings and his brief in support of such relief. As the plaintiff has been warn pursuant to Local Rule of Civil Procedure 8.01, and as any computer problems plaintiff's counsel had been experiencing should

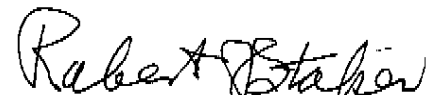
have been rectified after three and one half months, the Court finds that the plaintiff has failed to prosecute the above-entitled action.

II

On the basis of the foregoing, it is **ORDERED** that the above-entitled action be, and is, **DISMISSED**. All matters in this case being concluded, it is **ORDERED** dismissed and retired from the Court's docket.

The Clerk is directed to mail a copy of this Memorandum Opinion and Order to all counsel of record.

ENTER:

A handwritten signature in cursive script, reading "Robert J. Staker", written over a horizontal line.

ROBERT J. STAKER
Senior United States District Judge